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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

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ENROLLED

HOUSE BILL No. 2951

(By ~~Mr.~~ Del. J. Martin & Corra)

— ● —

Passed March 9, 1991

In Effect From Passage

H. B. 2951

(By DELEGATES J. MARTIN AND CERRA)

[Passed March 9, 1991; in effect from passage.]

AN ACT to amend and reenact article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the division of culture and history; qualifications of commissioner; changing administrative structure within the division; permitting three additional sections within the division; reordering sections and changing references; authorizing fees prescribed by the commissioner by rule for use of facilities; increasing membership on the archives and history commission from nine to thirteen and adding an archivist, a librarian, and a museum specialist to the commission; and authorizing division to enter into agreements with responsible individuals in carrying out its purposes.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1. Division of culture and history continued; sections and commissions; purposes; definitions; effective date.

1 The division of culture and history and the office of
2 commissioner of culture and history heretofore created
3 are hereby continued. The governor shall nominate, and
4 by and with the advice and consent of the Senate,
5 appoint the commissioner, who shall be the chief

6 executive officer of the division and shall be paid an
7 annual salary and be governed by the provisions of
8 section two-a, article seven, chapter six of this code. The
9 commissioner so appointed shall have: (1) A bachelor's
10 degree in one of the fine arts, social sciences, library
11 science or a related field; or (2) four years' experience
12 in the administration of museum management, public
13 administration, arts, history or a related field.

14 The division shall consist of five sections and two
15 citizen's commissions as follows:

16 (1) The arts and humanities section and a commission
17 on the arts;

18 (2) The archives and history section and a commission
19 on archives and history;

20 (3) The museums section;

21 (4) The historic preservation section; and

22 (5) The administrative section.

23 The commissioner shall exercise control and supervi-
24 sion of the division and shall be responsible for the
25 projects, programs and actions of each of its sections.
26 The purpose and duty of the division is to advance, foster
27 and promote the creative and performing arts and
28 crafts, including both indoor and outdoor exhibits and
29 performances; to advance, foster, promote, identify,
30 register, acquire, mark and care for historical, prehis-
31 torical, archaeological and significant architectural
32 sites, structures and objects in the state; to encourage
33 the promotion, preservation and development of signif-
34 icant sites, structures and objects through the use of
35 economic development activities such as loans, subsidies,
36 grants and other incentives; to coordinate all cultural,
37 historical and artistic activities in state government and
38 at state-owned facilities; to acquire, preserve and
39 classify books, documents, records and memorabilia of
40 historical interest or importance; and, in general, to do
41 all things necessary or convenient to preserve and
42 advance the culture of the state.

43 The division shall have jurisdiction and control and

44 may set and collect fees for the use of all space in the
45 building presently known as the West Virginia science
46 and culture center, including the deck and courtyards
47 forming an integral part thereof; the building presently
48 known as West Virginia Independence Hall in Wheel-
49 ing, including all the grounds and appurtenances
50 thereof; "Camp Washington Carver" in Fayette County,
51 as provided for in section fourteen of this article; and
52 any other sites as may be transferred to or acquired by
53 the division.

54 For the purposes of this article "commissioner" means
55 the commissioner of culture and history, and "division"
56 means the division of culture and history.

**§29-1-1a. Transfer of powers and duties; existing con-
tracts and obligations.**

1 Except as otherwise provided in this article, the
2 powers and duties of the West Virginia antiquities
3 commission, the West Virginia arts and humanities
4 council and the department of archives and history are
5 hereby transferred to the division of culture and history.
6 All existing contracts and obligations of the West
7 Virginia antiquities commission, the West Virginia arts
8 and humanities council and the department of archives
9 and history, or relating to the present science and
10 culture center, shall remain in full force and effect and
11 shall be performed by the division of culture and
12 history.

§29-1-1b. Termination date.

1 The division of culture and history, together with its
2 citizen's commissions, shall continue to exist until the
3 first day of July, one thousand nine hundred ninety-six,
4 upon which date it shall terminate unless sooner
5 continued and reestablished pursuant to the provisions
6 of article ten, chapter four of this code.

§29-1-2. General powers of commissioner.

1 The commissioner shall assign and allocate space in
2 all facilities assigned to the division and all space in the
3 building presently known as the West Virginia science
4 and culture center, and any other buildings or sites

5 under the control of the commissioner, and may, in
6 accordance with the provisions of chapter twenty-nine-
7 a of this code, prescribe rules, regulations and fees for
8 the use and occupancy of said facilities, including tours.

9 The commissioner shall coordinate the operations and
10 affairs of the sections and commissions of the division
11 and assign each section or commission responsibilities
12 according to criteria the commissioner deems most
13 efficient, productive and best calculated to carry out the
14 purposes of this article. The commissioner shall provide
15 to the fullest extent possible for centralization and
16 coordination of the bookkeeping, personnel, purchasing,
17 printing, duplicating, binding and other services which
18 can be efficiently combined. The commissioner may
19 establish such other sections for such purposes as he or
20 she deems necessary, and may appoint directors thereof.
21 The commissioner may appoint a director of the West
22 Virginia science and culture center. The commissioner
23 shall serve as the state historic preservation officer and
24 shall chair the capitol building commission.

25 After consultation with the section directors and the
26 commissions, the commissioner shall prepare a proposed
27 division budget for submission to the governor for each
28 fiscal year.

29 No contract, agreement or undertaking may be
30 entered into by any section of the division which involves
31 the expenditure of funds without the express written
32 approval of the commissioner as to fiscal responsibility.

33 The commissioner shall prepare and submit to the
34 governor an annual report in accordance with the
35 provisions of section twenty, article one, chapter five of
36 this code, which report shall include a detailed account
37 of the activities of each section and commission of the
38 division.

39 The commissioner shall employ all personnel for the
40 sections, except for persons in the professional positions
41 established within the sections as provided in this
42 article; and shall supply support services to the commis-
43 sions and to the governor's mansion advisory committee.

§29-1-3. Commission on the arts.

1 The commission on the arts heretofore created is
2 hereby continued and shall be composed of fifteen
3 appointed members.

4 The governor shall nominate, and by and with the
5 advice and consent of the Senate, appoint the members
6 of the commission for staggered terms of three years.
7 A person appointed to fill a vacancy shall be appointed
8 only for the remainder of that term.

9 No more than eight members may be of the same
10 political party. Members of the commission shall be
11 appointed so as to fairly represent both sexes, the ethnic
12 and cultural diversity of the state and the geographic
13 regions of the state.

14 The commission shall elect one of its members chair.
15 It shall meet at such time as shall be specified by the
16 chair. Notice of each meeting shall be given to each
17 member by the chair in compliance with the open
18 meetings laws of the state. A majority of the members
19 shall constitute a quorum for the transaction of business.
20 The director of the arts and humanities section shall be
21 an ex officio nonvoting member of the commission and
22 shall serve as secretary. The director or a majority of
23 the members may also call a meeting upon such notice
24 as provided in this section.

25 Each member or ex officio member of the commission
26 shall serve without compensation, but shall be reim-
27 bursed for all reasonable and necessary expenses
28 actually incurred in the performance of the duties of the
29 office; except that in the event the expenses are paid,
30 or are to be paid, by a third party, the member or ex
31 officio member, as the case may be, shall not be
32 reimbursed by the state.

33 Upon recommendation of the commissioner, the
34 governor may also appoint such officers of the state as
35 may be appropriate to serve on the commission as ex
36 officio nonvoting members.

37 The commission shall have the following powers:

38 (1) To advise the commissioner and the director of the
39 arts and humanities section concerning the accomplish-
40 ment of the purposes of that section and to establish a
41 state plan with respect thereto;

42 (2) To approve and distribute grants-in-aid and
43 awards from federal and state funds relating to the
44 purposes of the arts and humanities section;

45 (3) To request, accept or expend federal funds to
46 accomplish the purposes of the arts and humanities
47 section when federal law or regulations would prohibit
48 the same by the commissioner or section director, but
49 would permit the same to be done by the commission
50 on the arts;

51 (4) To otherwise encourage and promote the purposes
52 of the arts and humanities section;

53 (5) To approve rules and regulations concerning the
54 professional policies and functions of the section as
55 promulgated by the director of the arts and humanities
56 section; and

57 (6) To advise and consent to the appointment of the
58 director by the commissioner.

§29-1-4. Arts and humanities section; director.

1 The purposes and duties of the arts and humanities
2 section are to stimulate, encourage, assist, promote,
3 foster and develop the performing and creative arts and
4 crafts in the state; and in furtherance thereof to make
5 awards, prizes and grants to individual performers,
6 artists or craftsmen and to public or private corpora-
7 tions or associations in the field of either the performing
8 or creative arts and crafts that would tend to encourage
9 and foster the advancement of such arts and crafts; to
10 support cultural, artistic or craft exhibits or perform-
11 ances at the division's facilities or on tour; and to
12 perform such other duties as may be assigned to said
13 section by the commissioner.

14 With the advice and consent of the commission on the
15 arts, the commissioner shall appoint a director of the
16 arts and humanities section, who shall have: (1) A

17 bachelor's degree in the fine arts or related field or
18 equivalent training and experience; or (2) three years'
19 experience in administration of the fine arts or a related
20 field. Notwithstanding these qualifications, the person
21 serving as the executive director of the arts and
22 humanities council on the date of the enactment of this
23 article shall be eligible for appointment as the director
24 of the arts and humanities section.

25 With the approval of the commissioner, the director
26 shall establish professional positions within the section.
27 The director shall employ the personnel within these
28 professional positions for the section.

29 The director may promulgate rules and regulations in
30 accordance with the provisions of chapter twenty-nine-
31 a of this code concerning the professional policies and
32 functions of the arts and humanities section, subject to
33 the approval of the commission on the arts.

§29-1-5. Archives and history commission.

1 The archives and history commission which is hereby
2 created shall be composed of thirteen appointed
3 members, two ex officio voting members and five ex
4 officio nonvoting members as provided in this section.

5 The governor shall nominate, and by and with the
6 advice and consent of the Senate, appoint the members
7 of the commission for staggered terms of three years.
8 A person appointed to fill a vacancy shall be appointed
9 only for the remainder of that term.

10 No more than seven of the appointed members may
11 be of the same political party. Members of the commis-
12 sion shall be appointed so as to fairly represent both
13 sexes, the ethnic and cultural diversity of the state and
14 the geographic regions of the state. The archives and
15 history commission shall contain the required profes-
16 sional representation necessary to carry out the provi-
17 sions of the National Historic Preservation Act of 1966,
18 as amended, and shall serve as the "state review board"
19 and shall follow all rules and regulations as specified
20 therein. This representation shall include the following
21 professions: Historian, architectural historian, historical

22 architect, archaeologist specializing in historic and
23 prehistoric archaeology, archivist, librarian and mu-
24 seum specialist.

25 The commission shall elect one of its members chair.
26 It shall meet at such time as shall be specified by the
27 chair. Notice of each meeting shall be given to each
28 member by the chair in compliance with the open
29 meetings law. A majority of the voting members shall
30 constitute a quorum for the transaction of business.

31 In addition to the thirteen appointed members, the
32 president of the state historical society and the president
33 of the state historical association shall serve as ex officio
34 voting members of the archives and history commission.
35 The director of the state geological and economic survey,
36 the president of the West Virginia Preservation Al-
37 liance, Inc., and the state historic preservation officer
38 shall serve as ex officio nonvoting members of the
39 archives and history commission.

40 The directors of the archives and history section, the
41 historic preservation section and the museums section
42 shall be ex officio nonvoting members of the commis-
43 sion. The director of the archives and history section
44 shall serve as secretary of the commission. The secre-
45 tary, or a majority of the members, may also call a
46 meeting upon such notice as provided in this section.

47 Each member or ex officio member of the commission
48 shall serve without compensation, but shall be reim-
49 bursed for all reasonable and necessary expenses
50 actually incurred in the performance of the duties of the
51 commission; except that in the event the expenses are
52 paid, or are to be paid, by a third party, the member
53 or ex officio member, as the case may be, shall not be
54 reimbursed by the state.

55 The commission shall have the following powers:

56 (a) To advise the commissioner and the directors of
57 the archives and history section, the historic preserva-
58 tion section and the museums section concerning the
59 accomplishment of the purposes of those sections and to
60 establish a state plan with respect thereto;

61 (b) To approve and distribute grants-in-aid and
62 awards from federal and state funds relating to the
63 purposes of the archives and history section, the historic
64 preservation section and the museums section;

65 (c) To request, accept or expend federal funds to
66 accomplish the purposes of the archives and history
67 section, the historic preservation section and the
68 museums section when federal law or regulations would
69 prohibit the same by the commissioner or section
70 director, but would permit the same to be done by the
71 archives and history commission;

72 (d) To otherwise encourage and promote the purposes
73 of the archives and history section, the historic pres-
74 ervation section and the museums section;

75 (e) To approve rules and regulations concerning the
76 professional policies and functions of the archives and
77 history section, the historic preservation section and the
78 museums section as promulgated by the directors of
79 those sections;

80 (f) To advise and consent to the appointment of the
81 section directors by the commissioner; and

82 (g) To review and approve nominations to the state
83 and national registers of historic places.

§29-1-6. Archives and history section; director.

1 (a) The purposes and duties of the archives and
2 history section are to locate, survey, investigate,
3 register, identify, preserve, protect, restore and recom-
4 mend to the commissioner for acquisition documents
5 and records having historical, evidential, administrative
6 and/or legal value relating to the state of West Virginia
7 and the territory included therein from the earliest
8 times to the present, upon its own initiative or in
9 cooperation with any private or public society, organi-
10 zation or agency; to conduct a continuing survey and
11 study throughout the state to develop a state plan to
12 determine the needs and priorities for the preservation
13 of such documents and records; to direct, protect,
14 preserve, study and disseminate information on such
15 documents and records; to operate and maintain a state

16 library for the preservation of all public records, state
17 papers, documents and reports of all three branches of
18 state government including all boards, commissions,
19 departments and agencies as well as any other private
20 or public papers, books or documents of peculiar or
21 historic interest or significance; to designate appropriate
22 monuments, tablets or markers for historic,
23 architectural and scenic sites within the state and to
24 arrange for the purchase, replacement, care of and
25 maintenance of such monuments, tablets and markers
26 and to formulate and prepare suitable copy for them; to
27 edit and publish a historical journal devoted to the
28 history, biography, bibliography and genealogy of West
29 Virginia; and to perform such other duties as may be
30 assigned to the section by the commissioner.

31 (b) With the advice and consent of the archives and
32 history commission, the commissioner shall appoint a
33 director of the archives and history section, who shall
34 have: (1) A graduate degree in one of the social sciences,
35 or equivalent training and experience in the field of
36 West Virginia history, history, or in records, library or
37 archives management; and (2) three years' experience in
38 administration in the field of West Virginia history,
39 history, or in records, library or archives management.
40 Notwithstanding these qualifications, the person serving
41 as the state historian and archivist on the date of
42 enactment of this article shall be eligible for appointment
43 as the director of the archives and history section.
44 The director of the archives and history section shall
45 serve as the state historian and archivist.

46 (c) With the approval of the commissioner, the
47 director shall establish professional positions within the
48 section and develop appropriate organizational structures
49 to carry out the duties of the section. The director
50 shall employ the personnel with applicable professional
51 qualifications to fill positions within the organizational
52 structure with the minimum professional qualifications.
53 At the minimum, the following professions shall be
54 represented within the section staff: Historian, archivist,
55 librarian and technical and clerical positions as are
56 required.

57 (d) The director shall promulgate rules and regula-
58 tions with the approval of the archives and history
59 commission and in accordance with chapter twenty-
60 nine-a of this code concerning: (1) The professional
61 policies and functions of the archives and history section;
62 and (2) such other rules and regulations as may be
63 deemed necessary to effectuate the purposes of this
64 article.

§29-1-7. Museums section; director.

1 (a) The purposes and duties of the museums section
2 are to locate, survey, investigate, register, identify,
3 excavate, preserve, protect, restore and recommend to
4 the commissioner for acquisition historic objects worthy
5 of preservation, relating to the state of West Virginia
6 and the territory included therein from the earliest
7 times to the present, upon its own initiative or in
8 cooperation with any private or public society, organi-
9 zation or agency; to conduct a continuing survey and
10 study throughout the state to develop a state plan to
11 determine the needs and priorities for the preservation,
12 restoration or development of such objects; to direct,
13 protect, excavate, preserve, study or develop such
14 objects; to preserve and protect all battle or regimental
15 flags borne by West Virginians and other memorabilia
16 of historic interest; to operate and maintain a state
17 museum, and to coordinate activities with other muse-
18 ums in the state; and to perform such other duties as
19 may be assigned to the section by the commissioner.

20 (b) With the advice and consent of the archives and
21 history commission, in addition to the duties above set
22 forth, the section shall determine the whereabouts of
23 and require the return of furnishings and objects
24 missing from the capitol building and other state-owned
25 or controlled buildings, including, but not limited to,
26 furnishings chosen or purchased for the capitol by its
27 architect, Cass Gilbert. No furnishings from the capitol
28 may be sold or disposed of except pursuant to the
29 provisions of article three, chapter five-a of this code. If
30 furnishings originally designated as capitol building
31 furnishings have been sold or otherwise disposed of
32 without the requisite sale procedures, such furnishings

33 shall be returned to the capitol and, upon presentation
34 of proof of the amount paid, the current owner shall be
35 reimbursed for the cost of the furnishing less any
36 appropriate depreciation or wear and tear.

37 (c) With the advice and consent of the archives and
38 history commission, the commissioner shall appoint a
39 director of the museums section, who shall have: (1) A
40 graduate degree in one of the social sciences, or
41 equivalent training and experience in the field of West
42 Virginia history, history, archaeology, or in museum
43 administration; and (2) three years' experience in
44 administration in the field of West Virginia history,
45 history, archaeology, or in museum management.

46 (d) With the approval of the commissioner, the
47 director shall establish professional positions within the
48 section and develop appropriate organizational struc-
49 tures to carry out the duties of the section. The director
50 shall employ the personnel with applicable professional
51 qualifications to fill positions within the organizational
52 structure. At the minimum, the following professions
53 shall be represented within the section staff: Curator
54 and such technical and clerical positions as are required.
55 With the approval of the commissioner, the director
56 shall establish professional positions within the section.
57 The director shall employ the personnel within these
58 professional positions for the section.

59 (e) The director shall promulgate rules and regula-
60 tions with the approval of the archives and history
61 commission and in accordance with chapter twenty-
62 nine-a of this code concerning: (1) The professional
63 policies and functions of the museums section; and (2)
64 such other rules and regulations as may be deemed
65 necessary to effectuate the purposes of this section.

§29-1-8. Historic preservation section; director.

1 (a) The purposes and duties of the historic preserva-
2 tion section are to locate, survey, investigate, register,
3 identify, preserve, protect, restore and recommend to
4 the commissioner for acquisition historic, architectural,
5 archaeological and cultural sites, structures and objects
6 worthy of preservation, including human skeletal

7 remains, graves, grave artifacts and grave markers,
8 relating to the state of West Virginia and the territory
9 included therein from the earliest times to the present,
10 upon its own initiative or in cooperation with any
11 private or public society, organization or agency; to
12 conduct a continuing survey and study throughout the
13 state to develop a state plan to determine the needs and
14 priorities for the preservation, restoration or develop-
15 ment of such sites, structures and objects; to direct,
16 protect, excavate, preserve, study or develop such sites
17 and structures; to review all undertakings permitted,
18 funded, licensed or otherwise assisted, in whole or in
19 part, by the state for the purposes of furthering the
20 duties of the section; to carry out the duties and
21 responsibilities enumerated in the National Historic
22 Preservation Act of 1966, as amended, as they pertain
23 to the duties of the section; to develop and maintain a
24 West Virginia state register of historic places for use as
25 a planning tool for state and local government; to
26 cooperate with state and federal agencies in archaeolog-
27 ical work; to issue permits for the excavation or removal
28 of human skeletal remains, grave artifacts and grave
29 markers, archaeological, and prehistoric and historic
30 features under the provisions of section eight-a of this
31 article; and to perform such other duties as may be
32 assigned to the section by the commissioner.

33 (b) With the advice and consent of the archives and
34 history commission, the commissioner shall appoint a
35 director of the historic preservation section, who shall
36 have: (1) A graduate degree in one of the social sciences,
37 or equivalent training and experience in the field of
38 historic preservation, archaeology, West Virginia
39 history, or history; and (2) three years' experience in
40 administration in the field of West Virginia history,
41 history, historic preservation or archaeology. Notwith-
42 standing these qualifications, the person serving as the
43 deputy state historic preservation officer on the date of
44 enactment of this article shall be eligible for appoint-
45 ment as the director of the historic preservation section.
46 The director of the historic preservation section shall
47 serve as the deputy state historic preservation officer.

48 (c) With the approval of the commissioner, the
49 director shall establish professional positions within the
50 section and develop appropriate organizational struc-
51 tures to carry out the duties of the section. The director
52 shall employ the personnel with applicable professional
53 qualifications to fill positions within the organizational
54 structure with the minimum professional qualifications
55 necessary to carry out the provisions of the National
56 Historic Preservation Act of 1966, as amended. At the
57 minimum, the following professions shall be represented
58 within the section staff: Historian, architectural histo-
59 rian, a structural historian who specializes in historical
60 preservation, an archaeologist specializing in historic
61 and prehistoric archaeology, and such technical and
62 clerical positions as are required.

63 (d) The director shall promulgate rules and regula-
64 tions with the approval of the archives and history
65 commission and in accordance with chapter twenty-
66 nine-a of this code concerning: (1) The professional
67 policies and functions of the historic preservation
68 section; (2) the review of, and, when required, issuance
69 of permits for, all undertakings permitted, funded,
70 licensed or otherwise assisted, in whole or in part, by
71 the state as indicated in subsection (a) of this section,
72 in order to carry out the duties and responsibilities of
73 the section; (3) the establishment and maintenance of a
74 West Virginia state register of historic places, including
75 the criteria for eligibility of buildings, structures, sites,
76 districts and objects for the state register and proce-
77 dures for nominations to the state register and protec-
78 tion of nominated and listed properties; (4) the review
79 of historic structures in accordance with compliance
80 alternatives and other provisions in any state fire
81 regulation, and shall coordinate standards with the
82 appropriate regulatory officials regarding their applica-
83 tion; (5) review of historic structures in conjunction with
84 existing state or local building codes, and shall coordi-
85 nate standards with the appropriate regulatory officials
86 for their application; and (6) such other rules and
87 regulations as may be deemed necessary to effectuate
88 the purposes of this article.

§29-1-8a. Protection of human skeletal remains, grave artifacts and grave markers; permits for excavation and removal; penalties.

1 (a) *Legislative findings and purpose.*

2 The Legislature finds that there is a real and growing
3 threat to the safety and sanctity of unmarked human
4 graves in West Virginia and the existing laws of the
5 state do not provide equal or adequate protection for all
6 such graves. As evident by the numerous incidents in
7 West Virginia which have resulted in the desecration of
8 human remains and vandalism to grave markers, there
9 is an immediate need to protect the graves of earlier
10 West Virginians from such desecration. Therefore, the
11 purpose of this article is to assure that all human burials
12 be accorded equal treatment and respect for human
13 dignity without reference to ethnic origins, cultural
14 backgrounds, or religious affiliations.

15 The Legislature also finds that those persons engaged
16 in the scientific study or recovery of artifacts which
17 have been acquired in accordance with the law are
18 engaged in legitimate and worthy scientific and educa-
19 tional activities. Therefore, this legislation is intended to
20 permit the appropriate pursuit of those lawful activities.

21 Finally, this legislation is not intended to interfere
22 with the normal activities of private property owners,
23 farmers, or those engaged in the development, mining
24 or improvement of real property.

25 (b) *Definitions.*

26 For the purposes of this section:

27 (1) "Human skeletal remains" means the bones, teeth,
28 hair or tissue of a deceased human body;

29 (2) "Unmarked grave" means any grave or location
30 where a human body or bodies have been buried or
31 deposited for at least fifty years and the grave or
32 location is not in a publicly or privately maintained
33 cemetery or in the care of a cemetery association, or is
34 located within such cemetery or in such care and is not
35 commonly marked;

36 (3) "Grave artifact" means any items of human
37 manufacture or use that are associated with the human
38 skeletal remains in a grave;

39 (4) "Grave marker" means any tomb, monument,
40 stone, ornament, mound, or other item of human
41 manufacture that is associated with a grave;

42 (5) "Person" includes the federal and state govern-
43 ments and any political subdivision of this state; and

44 (6) "Disturb" means the excavating, removing, expos-
45 ing, defacing, mutilating, destroying, molesting, or
46 desecrating in any way of human skeletal remains,
47 unmarked graves, grave artifacts or grave markers.

48 (c) *Acts prohibited; penalties.*

49 (1) No person may excavate, remove, destroy, or
50 otherwise disturb any historic or prehistoric ruins,
51 burial grounds, archaeological site, or human skeletal
52 remains, unmarked grave, grave artifact or grave
53 marker of historical significance unless such person has
54 a valid permit issued to him or her by the director of
55 the historic preservation section: *Provided*, That the
56 supervising archaeologist of an archaeological investiga-
57 tion being undertaken in compliance with the federal
58 Archaeological Resources Protection Act (Public Law
59 96-95 at 16 USC 470(aa)) and regulations promulgated
60 thereunder shall not be required to obtain such permit,
61 but shall notify the director of the historic preservation
62 section that such investigation is being undertaken and
63 file reports as are required of persons issued a permit
64 under this section: *Provided, however*, That projects
65 being undertaken in compliance with section 106 of the
66 National Historic Preservation Act of 1966, as amended,
67 or subsection (a), section five of this article shall not be
68 required to obtain such permit for excavation, removal,
69 destruction or disturbance of historic or prehistoric
70 ruins or archaeological sites.

71 A person who, either by himself or through an agent,
72 intentionally excavates, removes, destroys or otherwise
73 disturbs any historic or prehistoric ruins, burial
74 grounds or archaeological site, or unmarked grave,

75 grave artifact or grave marker of historical significance
76 without first having been issued a valid permit by the
77 director of the historic preservation section, or who fails
78 to comply with the terms and conditions of such permit,
79 is guilty of a misdemeanor, and, upon conviction, shall
80 be fined not less than one hundred dollars nor more than
81 five hundred dollars, and may be imprisoned in the
82 county jail for not less than ten days nor more than six
83 months or both fined and imprisoned.

84 A person who, either by himself or through an agent,
85 intentionally excavates, removes, destroys or otherwise
86 disturbs human skeletal remains of historical signifi-
87 cance without first having been issued a valid permit
88 by the director of the historic preservation section, or
89 who fails to comply with the terms and conditions
90 relating to disinterment or displacement of human
91 skeletal remains of such permit, is guilty of the felony
92 of disinterment or displacement of a dead human body
93 or parts thereof under section fourteen, article eight,
94 chapter sixty-one of this code and, upon conviction, shall
95 be confined in the state penitentiary not less than two
96 nor more than five years.

97 A person who intentionally withholds information
98 about the excavation, removal, destruction, or other
99 disturbance of any historic or prehistoric ruins, burial
100 grounds, archaeological site, or human skeletal remains,
101 unmarked grave, grave artifact or grave marker of
102 historical significance is guilty of a misdemeanor and,
103 upon conviction, shall be fined not more than one
104 hundred dollars, and may be imprisoned in the county
105 jail not more than ten days.

106 (2) No person may offer for sale or exchange any
107 human skeletal remains, grave artifact or grave marker
108 obtained in violation of this section.

109 A person who, either by himself or through an agent,
110 offers for sale or exchange any human skeletal remains,
111 grave artifact or grave marker obtained in violation of
112 this section is guilty of a misdemeanor and, upon
113 conviction, shall be fined not less than one thousand
114 dollars nor more than five thousand dollars, and may be

115 imprisoned in the county jail not less than six months
116 nor more than one year.

117 (3) Each instance of excavation, removal, destruction,
118 disturbance or offering for sale or exchange under (1)
119 and (2) of this subsection shall constitute a separate
120 offense.

121 (d) *Notification of discovery of human skeletal remains*
122 *in unmarked locations.*

123 Within forty-eight hours of the discovery of human
124 skeletal remains, grave artifact or grave marker in an
125 unmarked grave on any publicly or privately owned
126 property the person making such discovery shall notify
127 the county sheriff of the discovery and its location. If the
128 human remains, grave artifact or grave marker appear
129 to be from an unmarked grave, the sheriff shall
130 promptly, and prior to any further disturbance or
131 removal of the remains, notify the director of the
132 historic preservation section. The director shall cause an
133 on-site inspection of the disturbance to be made to
134 determine the potential for archaeological significance
135 of the site: *Provided*, That when the discovery is made
136 by an archaeological investigation permitted under state
137 or federal law, the supervising archaeologist shall notify
138 the director of the historic preservation section directly.

139 If the director of the historic preservation section
140 determines that the site has no archaeological signifi-
141 cance, the removal, transfer and disposition of the
142 remains shall be subject to the provisions of article
143 thirteen, chapter thirty-seven of this code, and the
144 director shall notify the circuit court of the county
145 wherein the site is located.

146 If the director of historic preservation determines that
147 the site has a potential for archaeological significance,
148 the director shall take such action as is reasonable,
149 necessary and prudent, including consultation with
150 appropriate private or public organizations, to preserve
151 and advance the culture of the state in accordance with
152 the powers and duties granted to the director, including
153 the issuance of a permit for the archaeological excava-
154 tion or removal of the remains. If the director deter-

155 mines that the issuance of a permit for the archaeolog-
156 ical excavation or removal of the remains is not
157 reasonable, necessary or prudent, the director shall
158 provide written reasons to the applicant for not issuing
159 the permit.

160 (e) *Issuance of permits.*

161 All permits issued by the director of the historic
162 preservation section for the disturbance of human
163 skeletal remains, grave artifacts, or grave markers shall
164 at a minimum address the following conditions: (1) The
165 methods by which descendants of proven kinship to the
166 deceased are notified prior to the disturbance; (2) the
167 respectful manner in which the remains, artifacts or
168 markers are to be removed and handled; (3) the need
169 for any scientific analysis of the remains, artifacts or
170 markers and the duration of those studies; (4) the way
171 in which the remains may be reburied in consultation
172 with any descendants of proven kinship, when available;
173 and (5) such other conditions as the director may deem
174 necessary. Expenses accrued in meeting the permit
175 conditions shall be borne by the permit applicant, except
176 in cases where the deceased descendants or sponsors are
177 willing to share or assume the costs. A permit to disturb
178 human skeletal remains, grave artifacts or grave
179 markers will be issued only after alternatives to
180 disturbance and other mitigative measures have been
181 considered.

182 In addition, a person applying for a permit to excavate
183 or remove human skeletal remains, grave artifacts,
184 grave markers, or any historic or prehistoric features of
185 archaeological significance must:

186 (1) Provide a detailed statement to the director of the
187 historic preservation section giving the reasons and
188 objectives for excavation or removal and the benefits
189 expected to be obtained from the contemplated work;

190 (2) Provide data and results of any excavation, study
191 or collection in annual reports to the director of the
192 historic preservation section and submit a final report
193 to the director upon completion of the excavation; and

194 (3) Obtain the prior written permission of the owner
195 if the site of such proposed excavation is on privately
196 owned land.

197 Such permits shall be issued for a period of two years
198 and may be renewed at expiration. The permits are not
199 transferable but other persons who have not been issued
200 a permit may work under the direct supervision of the
201 person holding the permit. The person or persons to
202 whom a permit was issued must carry the permit while
203 exercising the privileges granted and must be present
204 at the site whenever work is being done.

205 Notwithstanding any other penalties to which a
206 person may be subject under this section for failing to
207 comply with the terms and conditions of a permit, the
208 permit of a person who violates any of the provisions of
209 this subsection shall be revoked.

210 As permits are issued, the director of the historic
211 preservation section shall maintain a catalogue of
212 unmarked grave locations throughout the state.

213 (f) *Property tax exemption for unmarked grave sites.*

214 To serve as an incentive for the protection of un-
215 marked graves, the owner, having evidence of the
216 presence of unmarked graves on his or her property,
217 may apply to the director of the historic preservation
218 section for a determination as to whether such is the
219 case. Upon making such a determination in the affirma-
220 tive, the director of the historic preservation section
221 shall provide written certification to the land owner that
222 the site containing the graves is a cemetery and as such
223 is exempt from property taxation upon presentation of
224 the certification to the county assessor. The area of the
225 site to receive property tax exempt status shall be
226 determined by the director of the historic preservation
227 section. Additionally, a property owner may establish
228 protective easements for the location of unmarked
229 graves.

230 (g) *Additional provisions for enforcement; civil penal-*
231 *ties; rewards for information.*

232 (1) The prosecuting attorney of the county in which

233 a violation of any provision of this section is alleged to
234 have occurred may be requested by the director of the
235 historic preservation section to initiate criminal prose-
236 cutions or to seek civil damages, injunctive relief and
237 any other appropriate relief. The director of the historic
238 preservation section shall cooperate with the prosecut-
239 ing attorney in resolving such allegations.

240 (2) Persons convicted of any prohibited act involving
241 the excavation, removal, destruction, disturbance or
242 offering for sale or exchange of historic or prehistoric
243 ruins, burial grounds, archaeological site, human
244 skeletal remains, unmarked grave, grave artifact or
245 grave marker under the provisions of subdivisions (1)
246 and (2), subsection (c) of this section shall also be liable
247 for civil damages to be assessed by the prosecuting
248 attorney in consultation with the director of the historic
249 preservation section.

250 Civil damages may include:

251 (i) Forfeiture of any and all equipment used in
252 disturbing the protected unmarked graves or grave
253 markers;

254 (ii) any and all costs incurred in cleaning, restoring,
255 analyzing, accessioning and curating the recovered
256 material;

257 (iii) any and all costs associated with recovery of data,
258 and analyzing, publishing, accessioning and curating
259 materials when the prohibited activity is so extensive as
260 to preclude the restoration of the unmarked burials or
261 grave markers;

262 (iv) any and all costs associated with restoring the
263 land to its original contour or the grave marker to its
264 original condition;

265 (v) any and all costs associated with reinterment of
266 the human skeletal remains; and

267 (vi) any and all costs associated with the determina-
268 tion and collection of the civil damages.

269 When civil damages are recovered, the proceeds, less
270 the costs of the prosecuting attorney associated with the

271 determination and collection of such damages, shall be
272 deposited into the endangered historic properties fund
273 and may be expended by the commissioner of culture
274 and history for archaeological programs at the state
275 level, including the payment of rewards for information
276 leading to the arrest and conviction of persons violating
277 the provisions of subdivisions (1) and (2), subsection (c)
278 of this section.

279 (3) The commissioner of culture and history is
280 authorized to offer and pay rewards of up to one
281 thousand dollars from funds on deposit in the endan-
282 gered historic properties fund for information leading
283 to the arrest and conviction of persons who violate the
284 provisions of subdivisions (1) and (2), subsection (c) of
285 this section.

286 (h) *Disposition of remains and artifacts not subject to*
287 *reburial.*

288 All human skeletal remains and grave artifacts found
289 in unmarked graves on public or private land, and not
290 subject to reburial, under the provisions of subsection (e)
291 of this section, are held in trust for the people of West
292 Virginia by the state and are under the jurisdiction of
293 the director of historic preservation. All materials
294 collected and not reburied through this section shall be
295 maintained with dignity and respect for the people of
296 the state under the care of the West Virginia state
297 museum.

**§29-1-8b. Protection of historic and prehistoric sites;
penalties.**

1 Historic and prehistoric landmarks, sites and dis-
2 tricts, identified by the historic preservation section, on
3 lands owned or leased by the state, or on private lands
4 where investigation and development rights have been
5 acquired by the state by lease or contract, shall not be
6 disturbed, or destroyed except as permitted under
7 sections eight and eight-a of this article.

8 Any person violating the provisions of this section
9 shall be guilty of a misdemeanor, and, upon conviction
10 thereof, shall be fined not more than five hundred

11 dollars, or imprisoned in the county jail not more than
12 six months, or both fined and imprisoned.

§29-1-9. Administrative section; director.

1 The purposes and duties of the administrative section
2 are to provide centralized support to the division in all
3 areas of operations.

4 The commissioner shall appoint a director of the
5 administrative section who shall have a bachelor's
6 degree and two-years experience in responsible positions
7 involving office management, public administration,
8 budget and fiscal administration, or related fields; or
9 six-years experience as outlined above. Notwithstanding
10 these qualifications, the person serving as director of the
11 administrative section on the date of enactment of this
12 section shall be eligible for appointment as director of
13 the administrative section.

14 With approval of the commissioner, the director of the
15 administrative section shall establish professional
16 positions within the section.

§29-1-10. Division employees classified by civil service; exceptions.

1 Effective the first day of July, one thousand nine
2 hundred seventy-seven, any person employed in any of
3 the agencies consolidated by this article who is a
4 classified civil service employee shall, within the limits
5 provided in article six of this chapter, remain in the civil
6 service system as a covered employee; and all persons
7 employed by the division of culture and history shall be
8 employed under the classified service of the civil service
9 system within the limits provided in article six of this
10 chapter.

§29-1-11. Power to accept and receive funds; power to apply for grants; disbursal of funds; restrictions on expenditure; disposition of funds heretofore received or appropriated.

1 The division may, in the name of the state of West
2 Virginia, through the commissioner or its commissions,
3 accept and receive grants, appropriations, gifts, be-

4 quests and funds from any public or private source for
5 the purpose of carrying out the duties and purposes of
6 this article. The division may, through the commissioner
7 or its commissions, apply for grants from the federal
8 government, private foundations and any other source
9 for the purposes of this article. All funds received from
10 any source shall be paid into the treasury of the state
11 and disbursed upon warrant by the state auditor
12 following requisition by the division. Such requisitions
13 shall be signed by the commissioner or by such other
14 person as the commissioner may authorize by written
15 document deposited with the auditor or, in the event of
16 emergency, by the governor or the governor's designee.
17 No funds or gifts received from any source shall be
18 expended or used for any purpose other than that
19 intended as evidenced by a positive and affirmative
20 declaration or by a negative restriction or limitation.

21 All federal or state funds received to provide grants-
22 in-aid or awards to further the purposes of this article
23 shall be approved and distributed by the appropriate
24 commission established by this article.

§29-1-12. Publication of materials; agreements.

1 The division of culture and history shall have the
2 power, responsibility and duty to publish or republish
3 material of prehistorical, historical, archaeological,
4 architectural or cultural interest. The division of culture
5 and history may sell such publications as well as
6 postcards and other items of such interest at the state
7 museum or any other site or property administered by
8 the state or at any special event sponsored by the state.
9 The division shall have the right to enter into agree-
10 ments with responsible individuals, private historical,
11 archaeological, architectural or cultural associations,
12 foundations or similar organizations or any agency of
13 the federal, state or local government for the purpose
14 of carrying out its purposes or for raising money to fund
15 the functions of the division.

§29-1-13. Land; control and disposal; rules and regulations.

1 All land owned or leased by the division of culture and
2 history shall be titled in the name of the public land

3 corporation of West Virginia but shall be controlled,
4 administered and supervised by the division. The
5 division, in the discretion of its commissioner, may sell
6 or dispose of any real or personal property which, in his
7 or her opinion, does not have sufficient prehistorical,
8 historical, archaeological, architectural or cultural value
9 to justify its retention.

10 The commissioner shall have the power to make and
11 promulgate rules and regulations relating to the general
12 management and administration of the division.

§29-1-14. Washington-Carver Camp; prohibition of disposition or removal of minerals without authorization by the Legislature.

1 Washington-Carver Camp in Fayette County, heretofore
2 transferred to the public land corporation under the
3 control, administration and supervision of the division
4 of culture and history shall continue under the control,
5 administration and supervision of the division.

6 The division of culture and history shall undertake to
7 develop such cultural and multicultural, artistic,
8 humanistic and educational programs at the camp as
9 will serve and benefit the citizens of the state and the
10 many cultures represented therein. In order to ensure
11 the maximum reasonable utilization of that portion of
12 the camp under its jurisdiction, the division shall,
13 during times the camp is not being used for the
14 division's purposes, make the camp available, under
15 such terms as the division deems proper, to any other
16 agency of government or nonprofit group desiring to use
17 the camp. The camp shall retain the name "Camp
18 Washington-Carver" as indicative of its heritage of
19 serving the black citizens of the state. The division is
20 authorized to provide necessary and suitable equipment
21 and other resources for implementing the provisions of
22 this section.

23 No minerals may be assigned, leased or otherwise
24 encumbered, sold, mined, or removed with respect to the
25 property heretofore transferred or the mineral rights
26 retained without specific authorization by the Legislature.
27

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Homer Heck

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect from passage.

Harrell E. Adams

Clerk of the Senate

Donald L. Keep

Clerk of the House of Delegates

Keith Burdette

President of the Senate

Robert C. Anderson

Speaker of the House of Delegates

The within *is approved* this the *2nd* day of *April*, 1991.

Gaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date

3/20/91

Time

5:10 pm